IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Crl.MC.No. 4924 of 2003(A)

CC.764/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR
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PETITIONER: ACCUSED:

M.V.SUKUMARAN,
SUB INSPECTOR OF POLICE, PAYYANNUR,
KANNUR DISTRICT.

BY ADV. SRI.K.V.SOHAN
SRI.B.PREMNATH (E)

RESPONDENTS: COMPLAINANT & STATE:
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1. M.V.UNNI, S/O. M.V.LAKSHMI,
WEAVERS STREET, PRACTISING AS ADVOCATE,
ZUBAIDA SHOPPING COMPLEX, PAYYANNUR-670 307.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.V.N.RAMESAN NAMBISAN
PUBLIC PROSECUTOR SRI. P. RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal M.C.No.4924 OF 2003 (A)

Dated this the 26th day of July, 2007

O R D E R

A complaint was filed by the 1st respondent that he was arrested and illegally detained by the petitioner herein. It is the case of the complainant that after producing two accused to the Sessions Court, he was returning in the autorickshaw with the accused. At that time autorickshaw was intercepted and along with the accused advocate was also taken to police station and illegally detained him in the police station with the advocate's robe and abusive words were also showered by the accused not only on him but on the entire advocates community. Accused, (S.I. and Head Constable) committed offence punishable under Section 341, 294(b), 506(1), 365 and 342 read with Section 34 of the Indian Penal Code. According to the petitioner he was working as Sub Inspector of Police, Payannur Police Station, got information that accused in Crime No.475/2002 namely Ishak and Ashraf who were absconding

had appeared before the Assistant Sessions Court, Payyannur in cases pending against them as S.C.202/2001 and S.C.334/2001 and was returning along with first respondent advocate in an autorickshaw to the office of the advocate. The petitioner proceeded and prevented the autorickshaw along with a Head Constable and informed the advocate that persons along with him are accused in another crime and they are to be arrested. The Head Constable was directed to take the accused to the Police Station. The advocate refused to step down from autorickshaw and followed the accused to the Police station where he remained for some time trying to take them back. According to the petitioner it was done in exercise of the official duty. Magistrate went wrong in taking cognizance of the case. As false complaint is levelled, without sanction complaint shall be quashed and in support of his case, petitioner submitted the decision in ***Sankaran Moitra v. Sadhna Das and another ((2006) 4 SCC 584).*** Counsel for the respondents relies on the decision in ***Bakhshish Singh Brar v. Gurmej Kaur and another ((1987) 4 SCC 663)*** and argued that the alleged acts were done not in the discharge of

official duties. Even if allegations are correct, whether it can be treated as done by the petitioner in the course of official duty and whether prior sanction is necessary etc. can be decided by the Magistrate. I am of the opinion that question regarding lack of sanction may be raised before the Magistrate Court and Magistrate may decide the matter as a preliminary issue. If it is found that cognizance was taken without prior sanction and prior sanction was necessary, he can discharge the accused otherwise continue with the trial. With that direction this Crl.M.C. is disposed of. However, I am not expressing any opinion regarding the merits of the case at this stage.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal. OF 1998

JUDGMENT

14th March, 2007